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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 232.

GEORGE W. CAMPBELL AND GEORGE A. THAYER, SURVIVORS OF LUDLOW D. CAMPBELL, DECEASED, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 24, 1880.

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1 United States Court of Claims.

GEORGE W. CAMPBELL AND GEORGE A. Thayer, survivors of Ludlow D. Campbell, deceased,
against
THE UNITED STATES.
No. 11475.

I. *Petition.—Filed December* 26, 1876. J. R.

To the honorable the judges of the Court of Claims:

The petition of George W. Campbell, of West New Brighton, Staten Island, in the State of New York, and George A. Thayer, of Brooklyn, in said State, survivors of Ludlow D. Campbell, late of said West New Brighton, respectfully showeth:

First. That heretofore, and at the several times hereinafter stated down to the 30th day of October, 1876, when said Ludlow D. Campbell died, your petitioners and said Ludlow D. Campbell were copartners, engaged in business as such at the port and city of New York, under the firm name of Campbell and Thayer, and your petitioners are the survivors of said firm, and as such the owners of and entitled to all the claims hereinafter mentioned.

Second. That by the act of Congress of the United States, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," approved August 5th, 1861, which was in force at the time of the importation of all the linseed and the exportation of all the linseed cake in this petition mentioned, it was provided that there should be allowed on all articles wholly manufactured of materials imported on which duties had been paid, when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as should be prescribed by the Secretary of the Treasury: Provided, That ten per centum on the amount of all drawbacks so allowed should be retained for the use of the United States, by the collectors paying such drawbacks respectively. That pursuant to said act the Secretary of the Treasury established regulations under date of January 22d, 1862, entitled "Drawbacks on articles wholly manufactured of materials imported on which duties have been paid;" providing that, to entitle the exporter to such allowance of drawback, he must, before putting or lading any of the articles intended to be exported by him for benefit of drawback on board any vessel for exportation, lodge with the collector of the customs for the district from which such exportation is to be made an entry setting forth his intentions to export such articles, and the marks, numbers, and a particular description of the same, with their quantity and value, and designating the manufacturer thereof, the place where deposited, the name of the vessel, or other conveyance in or by which, and the port or place to which the same is intended to be exported; and also describing in such entry the materials from which he claims the articles to have been manufactured, designating when, where, whence, and by whom, and in what vessel the same were imported, and specifying the quantity and value thereof used in the manu-

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facture; such entry upon presentation to be verified by the oath or affirmation of the proprietor and foreman of the manufactory in which such articles were made. That said regulations further provided for the due inspection of goods so offered to be entered for drawback, for the superintendence by the customs authorities of the lading thereof, for a bond to be executed by the exporter with sureties conditioned that the goods should not be relanded in the United States, and for the furnishing of proof of their delivery at the foreign port of destination; whereupon the said manufactured articles having been laden for exportation, the said regulations required the collector, in conjunction with the naval officer, to compute the amount of drawback to be paid at the rates in that behalf established by said regulations, and to grant to the exporter a certificate for the net amount of such drawback, payable to the exporter or his order in thirty days from the date of the clearance of the vessel in which the said exportation was made, and to pay such certificates on the ma-
3 turity thereof; and the said regulations further provided, in accordance with the provisions of said act of Congress, that the rates of drawback to be allowed on the exportation of oil cake manufactured from imported linseed should be seventeen cents per one hundred pounds.

Third. That on or about the 19th day of January, 1871, your petitioners and the said Ludlow D. Campbell were the owners of certain two thousand bags of linseed cake, marked C. and T., said bags containing four hundred and forty-seven thousand seven hundred and twenty-nine (447,729) pounds of linseed cake, and being then deposited in their oil factory, at 69 Front street, in Brooklyn; which linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell, at their said factory, wholly out of materials the growth or production of a foreign country, imported into the United States, on which duties had been paid to the United States, to wit, out of two certain importations of linseed following: ten thousand and eight hundred bushels, imported at New York, by your petitioners and said Ludlow D. Campbell, by a vessel called the Hermon, from Calcutta, on the 7th day of December, 1870, and two thousand and three hundred and sixty-eight bushels, imported at New York by Daniel Bacon, by a vessel called the Cynric from Calcutta, on the 24th day of November, 1870; that on the said linseed, out of which the said cake had been manufactured, there had been paid to the United States, at the office of the collector of the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the said nineteenth day of January, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said linseed cake from New York to London, for the benefit of said drawback, by the Sterling Castle, and to enter the same for drawback at the office of the collector of the customs for the port of New York, in accordance with the said act and regulations, duly presented to and lodged with the said collector an entry of said linseed cake, conforming in all respects to the
4 requirements of said act regulations, and duly made such entry

in duplicate, and gave the bond, with sureties in that behalf, required by law, and in all respects conformed to said act and regulations, so as to entitle them to the said allowance of drawback. That the said collector, although he accepted and received such entry and bond, wholly declined and refused to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate on that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them or their order said drawback or any part thereof. That after the making and presentation and lodging with said collector of said entry and bond, and on the twenty-first day of January, 1871, the said two thousand bags of linseed cake were, by your petitioners and said Ludlow D. Campbell, duly shipped and laden on board of said Sterling Castle, as by the bills of lading, duly issued therefor, will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered; and no part thereof has been at any time relanded in any port or place within the limits of the United States. That your petitioners and said Ludlow D. Campbell were, and your petitioners as survivors as aforesaid now are, justly, and lawfully entitled to receive from the United States an allowance of drawback on said linseed cake, as provided by said act and regulations, of $685.02 in gold coin of the United States, after deducting therefore the ten per centum required to be retained therefrom for the use of the United States.

That the said Sterling Castle, with said linseed cake on board, cleared at said custom-house for London, on the thirtieth day of January, 1871, and that if the said collector had complied with the said act and regulations, and issued in due course his certificate for the payment of said drawback of duties, the said sum of six hundred and eighty-five dollars and two cents would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf, in thirty days from the date of such clearance; that is to say, on the first day of March, 1871, and the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in the said sum of six hundred and eighty-five dollars and two cents in gold coin of the United States, with interest thereon from the said first day of March, 1871.

Fourth. That on or about the twenty-eighth day of January, 1871, your petitioners and said Ludlow D. Campbell were the owners of three thousand other bags of linseed cake, marked C. & T., said bags containing 742,663 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell at their said factory, wholly out of materials the growth or production of a foreign country, imported into the United States, on which duties had been paid to the United States, to wit, out of two certain importations of linseed following: 4,532 bushels imported at New York by Daniel Bacon, by a vessel called the Cynric, from Calcutta, on the 24th day of November, 1870, and seventeen thousand three hundred and twenty-five bushels, imported at New York by Weston and Gray, by a vessel called the Eurydice, from Calcutta, on the thirteenth day of December, 1870.

That, on the said linseed out of which the said last-mentioned cake had been manufactured, there had been paid to the United States, at the office of the collector of customs for the port of New York, the duties imposed

by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the 28th day of January, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the last-mentioned linseed cake from New York to London for the benefit of said drawback, by the Lufra, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to and lodged with the said collector an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations, and duly made such entry in duplicate, and gave the bond with sureties in that behalf required by law, and in all respects conformed to said act and regulations, so as to entitle them to the said allowance of drawback; that the said collector, although he accepted and received such entry and bond, wholly declined and refused to give to your petitioners and said Ludlow D. Campbell, or
6 either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them or their order said drawback, or any part thereof.

That after the making, presentation, and lodging with said collector of said entry and bond, and on the eighth day of February, 1871, the said last-mentioned 3,000 bags of linseed cake were, by your petitioners and said Ludlow D. Campbell, duly shipped and laden on board of said Lufra, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors aforesaid, now are, justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of eleven hundred and thirty-six dollars and twenty-eight cents in gold coin of the United States, after deducting therefrom the ten per centum required to be retained therefrom for the use of the United States.

That the said Lufra, with said last-mentioned linseed cake on board, cleared at said custom-house for London on the eighth day of February, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell, in due course, his certificate for the payment of said drawback of duties, the said last-mentioned sum of $1,136.28 would have been due and payable to your petitioners and the said Ludlow D. Campbell in that behalf, in thirty days from the date of such clearance, that is to say, on the tenth day of March, 1871; and that the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of eleven hundred and thirty-six dollars and twenty-eight cents, in gold coin of the United States, with interest thereon from the tenth day of March, 1871.

Fifth. That on or about the eighth day of February, 1871, your petitioners and said Ludlow D. Campbell were the owners of 1,500 other bags of linseed cake marked C. & T., said bags containing 371,765
7 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell at their said factory, wholly out of materials the growth or production of a foreign country, imported into the United States, on which duties had been paid to the United States, to wit, out of two certain importations of linseed following: 7,174 bushels imported at New York by Weston and Gray, by a vessel called the Eurydice, from Calcutta, on the 13th day of December, 1870, and 3,760 bushels imported at New York by J. L. Phipps & Co., by the said vessel called the Eurydice, from Calcutta, on the said thirteenth day of December, 1870.

That on the said linseed, out of which the said last-mentioned cake had been manufactured, there had been paid to the United States, at the office of the collector of customs for the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the said eighth day of February, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the last-mentioned linseed cake from New York to London, for the benefit of said drawback, by the Warwick Castle, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to and lodged with the said collector an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said acts and regulations, and duly made such entry in duplicate, and gave the bond, with sureties in that behalf, required by law, and in all respects conformed to said act and regulations, so as to entitle them to the said allowance of drawback; that the said collector, although he accepted and received such entry and bond, wholly declined and refused to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them, or their order, said drawback, or any part thereof.

8 That after the making, presentation, and lodging with said collector of said entry and bond, and on the 13th day of February, 1871, the said last-mentioned 1,500 bags of linseed cake were by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Warwick Castle, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors as aforesaid, now are, justly and lawfully entitled to receive from the United States an allowance of drawback on such last-

mentioned linseed cake, as provided by said act and regulations, of five hundred and sixty-eight dollars and eighty cents, in gold coin of the United States, after deducting therefrom the ten per centum required to be retained therefrom for the use of the United States.

That the said Warwick Castle, with said last-mentioned linseed cake on board, cleared at said custom-house for London, on the 16th day of February, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell, in due course, his certificate for the payment of said drawback of duties, the said last-mentioned sum of $568.80 would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf, in thirty days from the date of such clearance, that is to say, on the eighteenth day of March, 1871; and that the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of five hundred and sixty-eight dollars and eighty cents, in gold coin of the United States, with interest thereon from the eighteenth day of March, 1871.

Sixth. That on or about the twenty-first day of February, 1871, your petitioners and said Ludlow D. Campbell were the owners of fifteen hundred other bags of linseed cake, marked C. &. T., said bags containing 362,646 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D.
9 Campbell, at their said factory, wholly out of materials the growth or production of a foreign country imported into the United States on which duties had been paid to the United States, to wit, out of three certain importations of linseed, following: 1,505 bushels imported at New York, by Kirkland and Von Sachs, by a vessel called the Royal Alexandra, from Calcutta, on the third day of September, 1870; 682 bushels imported at New York, by I. G. Whitney and Co., by a vessel called the Warwick, from Calcutta, on the fifteenth day of October, 1870, and 8,479 bushels imported at New York, by Wills, Edmands and Co., by a vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870.

That on the said linseed, out of which the said last-mentioned cake had been manufactured, there had been paid to the United States at the office of the collector of the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2d, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the twenty-first day of February, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said last-mentioned linseed cake from New York to London, for the benefit of said drawback, by the Dilpussund, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to the said collector, and made application to lodge with him an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations; that the said collector wholly declined and refused to receive

the said entry, or to permit the same to be made, and although your petitioners and said Ludlow D. Campbell were ready and willing, and duly offered to make such entry in duplicate, and to give the bond with sureties in that behalf required by law, and in all respects to conform to said act and regulations so as to entitle them to the said allowance of drawback, yet the said collector wholly declined and refused to accept said entry or bond, or to perform in any manner the duties for him prescribed
10 by said act and regulations in respect to goods entitled to drawback, or to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them, or their order, said drawback, or any part thereof. That after such presentation of said entry, and the refusal of said collector to accept or receive the same, and on the twenty-third day of February, 1871, the said last-mentioned 1,500 bags of linseed cake were, by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Dilpussund, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioner, as survivors as aforesaid, now are justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of five hundred and fifty-four $\frac{85}{100}$ dollars in gold coin of the United States, after deducting therefrom the ten per centum required to be retained therefrom for the use of the United States.

That the said Dilpussund, with said last-mentioned linseed cake on board, cleared at said custom-house for London on the second day of March, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell in due course his certificate for the payment of said drawback of duties, the said last-mentioned sum of five hundred and fifty-four $\frac{85}{100}$ dollars would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf in thirty days from the date of such clearance, that is to say, on the first day of April, 1871, and the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of five hundred and fifty-four dollars and eighty-five cents in gold coin of the United States, with interest thereon from the first day of April, 1871.

Seventh. That on or about the first day of March, 1871, your petitioners and said Ludlow D. Campbell were the owners of three thousand
11 other bags of linseed cake, marked C. & T., said bags containing 655,848 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell at their said factory wholly out of materials the growth or production of a foreign country imported into the United States, on which duties had been paid to the United States, to wit, out of four certain importations of linseed following: 1,323 bushels imported at New York by

Wills, Edmands & Co., by a vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870; 3,711 bushels, imported at New York by said Wills, Edmands & Co., by a vessel called the Kearsage, from Calcutta, on the twelfth day of December, 1870; 12,341 bushels imported at New York by Busk and Jevons by said vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870; and 1,915 bushels imported at New York by J. L. Phipps & Co. by said vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870. That on the said linseed, out of which the said last-mentioned cake had been manufactured, there had been paid to the United States, at the office of the collector for the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the first day of March, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said last-mentioned linseed cake from New York to London for the benefit of said drawback by the Tantallon Castle, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to the said collector and made application to lodge with him an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations; that the said collector wholly declined and refused to receive the said entry or to permit the same to be made; and although your petitioners and
12 said Ludlow D. Campbell were ready and willing and duly offered to make such entry in duplicate, and to give the bond with sureties in that behalf required by law, and in all respects to conform to said act and regulations so as to entitle them to the said allowance of drawback, yet the said collector wholly declined and refused to accept said entry or bond or to perform in any manner the duties for him prescribed by said act and regulations in respect to goods entitled to drawback, or to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them or their order said drawback, or any part thereof. That after such presentation of said entry and the refusal of said collector to accept or receive the same, and on the seventh day of March, 1871, the said last-mentioned 3,000 bags of linseed cake were by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Tantallon Castle, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors as aforesaid, now are, justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of one thousand and three $\frac{45}{100}$ dollars in gold coin of the United States, after deducting therefrom the ten per centum required to be retained therefrom for the use of the United States.

That the said Tantallon Castle, with said last-mentioned linseed cake on board, cleared at said custom-house for London on the thirteenth day of March, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell, in due course, his certificate for the payment of said drawback of duties, the said last-mentioned sum of one thousand and three $\frac{45}{100}$ dollars would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf in thirty days from the date of such clearance, that is to say, on the twelfth day of April, 1871; and the United States are, by reason of the premises, justly indebted to your peti-
13 tioners, as survivors as aforesaid, in said further sum of one thousand and three dollars and forty-five cents in gold coin of the United States, with interest thereon from the twelfth day of April, 1871.

Eighth. That on or about the eleventh day of April, 1871, your petitioners and said Ludlow D. Campbell were the owners of 4,500 other bags of linseed cake, marked C. & T., said bags containing 919,239 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell at their said factory wholly out of materials the growth or production of a foreign country, imported into the United States, on which duties had been paid to the United States, to wit, out of four certain importations of linseed, following, 2,729 bushels imported at New York by J. L. Phipps and Co., by a vessel called the Sarah Hignett, from Calcutta, on the seventh day of Decemher, 1870; 11,059 bushels imported at New York by Kirkland and Von Sachs, by a vessel called the Roselle, from Calcutta, on the eighth day of December, 1870; 13,059 bushels imported at New York by Busk and Jevons, by said vessel called the Roselle, from Calcutta, on the eighth day of December, 1870; and 189 bushels imported at New York by Kirkland and Von Sachs, by a vessel called the Asia, from Calcutta, on the second day of November, 1870. That on the said linseed, out of which the said last-mentioned cake had been manufactured, there had been paid to the United States, at the office of the collector for the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2d, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the eleventh day of April, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said last-mentioned linseed cake from New York to London for the benefit of said drawback by the Annie Richmond, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance
14 with the said act and regulations, duly presented to the said collector, and made application to lodge with him an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations; that the said collector wholly declined and refused to receive the said entry or to permit the same to be made, and although your petitioners and said Ludlow D. Campbell were ready and willing and duly offered to make such entry in duplicate and to give the bond with sureties

in that behalf required by law, and in all respects to conform to said act and regulations so as to entitle them to the said allowance of drawback, yet the said collector wholly declined and refused to accept said entry or bond, or to perform in any manner the duties for him prescribed by said act and regulations in respect to goods entitled to drawback, or to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them or their order said drawback or any part thereof. That after such presentation of said entry and the refusal of said collector to accept or receive the same, and on the fifteenth day of April, 1871, the said last-mentioned 4,500 bags of linseed cake were by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Annie Richmond, as by the bills of lading duly issued therefore will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors as aforesaid, now are, justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of fourteen hundred and six $\frac{44}{100}$ dollars in gold coin of the United States, after deducting therefrom the ten per centum required to be retained therefrom for the use of the United States.

That the said Annie Richmond, with said last-mentioned linseed cake on board, cleared at said custom-house for London on the eighteenth day of April, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell in due course his certificate for the payment of said drawback of duties, the said last-mentioned sum of fourteen hundred and six dollars and forty-four cents would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf, in thirty days from the date of such clearance, that is to say, on the eighteenth day of May, 1871, and the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of fourteen hundred and six dollars and forty-four cents in gold coin of the United States, with interest thereon from the eighteenth day of May, 1871.

Ninth. That on or about the twenty-ninth day of April, 1871, your petitioners and said Ludlow D. Campbell were the owners of six thousand other bags of linseed cake, marked "C. & T.," said bags containing 1,416,117 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell, at their said factory, wholly out of materials the growth or production of a foreign country, imported into the United States, on which duties had been paid to the United States, to wit, out of three certain importations of linseed, following: 9,611 bushels imported at New York, by Kirkland and Von Sachs, by a vessel called the Asia, from Calcutta, on the second day of November, 1870; 30,143 bushels imported at New York, by Weston and Gray, by a vessel called the Carpo, from Calcutta, on the twenty-fourth day of November, 1870; and 1,897 bushels im-

ported at New York, by Kirkland and Von Sachs, by a vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870.

That on the said linseed out of which the said last-mentioned cake had been manufautured there had been paid to the United States, at the office of the collector for the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2d, 1881, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

16 That on the twenty-ninth day of April, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said last-mentioned linseed cake from New York to London, for the benefit of said drawback, by the Lincoln, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to the said collector, and made application to lodge with him an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations; that the said collector wholly declined and refused to receive the said entry or permit the same to be made, and although your petitioners and the said Ludlow D. Campbell, were ready and willing and duly offered to make such entry in duplicate, and to give the bond with sureties in that behalf required by law, and in all respects to conform to said act and regulations so as to entitle them to the said allowance of drawback, yet the said collector wholly declined and refused to accept said entry or bond, or to perform in any manner the duties for him prescribed by said act and regulations in respect to goods entitled to drawback, or to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them, or their order, said drawback, or any part thereof. That after such presentation of said entry, and the refusal of said collector to accept or receive the same, and on the ninth day of May, 1871, the said last-mentioned 6,000 bags of linseed cake were by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Lincoln, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors as aforesaid, now are, justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of twenty-one hundred and sixty-six $\frac{65}{100}$ dollars in gold coin of the United States, after deducting therefrom the ten per centum required to be retained threfrom for the use of the United States.

17 That the said Lincoln, with said last-mentioned linseed cake on board, cleared at said custom-house for London, on the tenth day of May, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and the said Ludlow D. Campbell, in due course his certificate for the payment of said

drawback of duties, the said last-mentioned sum of twenty-one hundred and sixty-six $\frac{65}{100}$ dollars would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf in thirty days from the date of such clearance, that is to say, on the ninth day of June, 1871, and the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of twenty-one hundred and sixty-six dollars and sixty-five cents in gold coin of the United States, with interest thereon from the ninth day of June, 1871.

Tenth. That on or about the eighth day of June, 1871, your petitioners and said Ludlow D. Campbell were the owners of 3,900 other bags of linseed cake, marked C. & T., said bags containing 985,000 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell at their said factory wholly out of materials the growth or production of a foreign country imported into the United States, on which duties had been paid to the United States, to wit, out of three certain importations of linseed, following: 4,904 bushels imported at New York by Kirkland and Von Sachs, by a vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870; 5,350 bushels imported at New York by G. Tuckerman and Co., by a vessel called the Sarah Hignett, from Calcutta, on the seventh day of December, 1870; and 18,719 bushels imported at New York by Wills, Edmands and Co., by a vessel called the Benton, from Calcutta, on the thirteenth day of December, 1870. That on the said linseed, out of which the said last-mentioned cake had been manufactured, there had been paid to the United States, at the office of the collector for the port of New York, the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2d, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

18 That on the eighth day of June, 1871, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said last-mentioned linseed cake from New York to London, for the benefit of said drawback, by the Stanfield, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to the said collector, and made application to lodge with him an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations; that the said collector wholly declined and refused to receive the said entry or to permit the same to be made, and although your petitioners and said Ludlow D. Campbell were ready and willing and duly offered to make such entry in duplicate, and to give the bond with sureties in that behalf required by law, and in all respects to conform to said act and regulations, so as to entitle them to the said allowance of drawback, yet the said collector wholly declined and refused to accept said entry or bond, or to perform in any manner the duties for him prescribed by said act and regulations in respect to goods entitled to drawback, or to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed

for the payment of said drawback of duties on said linseed cake, or to pay to them, or their order, said drawback, or any part thereof. That after such presentation of said entry, and the refusal of said collector to accept or receive the same, and on the fifteenth day of June, 1871, the said last-mentioned 3,900 bags of linseed cake were by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Stanfield, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors as aforesaid, now are, justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of fifteen hundred and seven $\frac{05}{100}$ dollars, in gold coin of the United States, after deducting therefrom the ten per centum required to be retained therefrom for the use of the United States.

19 That the said Stanfield, with said last-mentioned linseed cake on board, cleared at said custom-house for London, on the fifteenth day of June, 1871, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell, in due course, his certificate for the payment of said drawback of duties, the said last-mentioned sum of fifteen hundred and seven $\frac{05}{100}$ dollars would have been due and payable to your petitioners and said Ludlow D. Campbell in that behalf, in thirty days from the date of such clearance, that is to say, on the fifteenth day of July, 1871, and the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of fifteen hundred and seven dollars and five cents, in gold coin of the United States, with interest thereon from the fifteenth day of July, 1871.

Eleventh. That on or about the twenty-third day of April, 1872, your petitioners and said Ludlow D. Campbell were the owners of 2,300 other bags of linseed cake marked C. & T., said bags containing 578,900 pounds of said linseed cake, and being then deposited in their oil factory at 69 Front street, in Brooklyn, which last-mentioned linseed cake had been manufactured by your petitioners and said Ludlow D. Campbell at their said factory wholly out of materials the growth or production of a foreign country, imported into the United States, on which duties had been paid to the United States, to wit, out of a certain importation of linseed, following, namely, 17,024 bushels imported at New York, by Kirkland and Von Sachs, by a vessel called the Shahpore, from Calcutta, on the twenty-first day of November, 1870; that on the said linseed out of which the said last-mentioned cake had been manufactured there had been paid to the United States at the office of the collector for the port of New York the duties imposed by the tariff act in force at the times of such importation, to wit, by the tenth section of the act of Congress of March 2d, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," at the rate of sixteen cents for each and every fifty-two pounds thereof.

That on the twenty-third day of April, 1872, your petitioners and said Ludlow D. Campbell, desiring and intending to export the said last-mentioned linseed cake from New York to London, for the benefit of
20 said drawback, by the Omba, and to enter the same for drawback at the office of the collector of customs for the port of New York, in accordance with the said act and regulations, duly presented to the said collector, and made application to lodge with him an entry of said last-mentioned linseed cake, conforming in all respects to the requirements of said act and regulations; that the said collector wholly declined and refused to receive the said entry or to permit the same to be made, and although your petitioners and said Ludlow D. Campbell were ready and willing and duly offered to make such entry in duplicate and to give the bond with sureties in that behalf required by law, and in all respects to conform to said act and regulations so as to entitle them to the said allowance of drawback, yet the said collector wholly declined and refused to accept said entry or bond, or to perform in any manner the duties for him prescribed by said act and regulations in respect to goods entitled to drawback, or to give to your petitioners and said Ludlow D. Campbell, or either of them, the certificate in that behalf by said regulations prescribed for the payment of said drawback of duties on said linseed cake, or to pay to them, or their order, said drawback, or any part thereof. That after such presentation of said entry and the refusal of said collector to accept or receive the same, and on the thirtieth day of April, 1872, the said last-mentioned 2,300 bags of linseed cake were by your petitioners and said Ludlow D. Campbell duly shipped and laden on board of said Omba, as by the bills of lading duly issued therefor will appear, and exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

That your petitioners and said Ludlow D. Campbell were, and your petitioners, as survivors as aforesaid, now are justly and lawfully entitled to receive from the United States an allowance of drawback on such last-mentioned linseed cake, as provided by said act and regulations, of eight hundred and eighty-five $\frac{72}{100}$ dollars in gold coin of the United States, after deducting therefrom ten per centum required to be retained therefrom for the use of the United States.

That the said Omba, with said last-mentioned linseed cake on board, cleared at said custom-house for London, on the first day of May,
21 1872, and that if the said collector had complied with the said act and regulations, and issued to your petitioners and said Ludlow D. Campbell, in due course, his certificate for the payment of said drawback of duties, the said last-mentioned sum of eight hundred and eighty-five $\frac{72}{100}$ dollars would have been due and payable to your petitioners, and said Ludlow D. Campbell in that behalf in thirty days from the date of such clearance, that is to say, on the thirty-first day of May, 1872, and the United States are, by reason of the premises, justly indebted to your petitioners, as survivors as aforesaid, in said further sum of eight hundred and eighty-five dollars and seventy-two cents in gold coin of the United States, with interest thereon from the thirty-first day of May, 1872.

Twelfth. That, as your petitioners are informed and believe, the said

collector, in refusing to certify and pay drawback on the several parcels of linseed cake above-mentioned, and (whenever the entries therefor and bonds thereon were not accepted and received by him as aforesaid) in refusing to allow such entries for drawback to be made, and in refusing to accept your petitioners' bond thereon, acted under instructions from, or with the sanction of, the Secretary of the Treasury, who took the ground that, by the twenty-first section of the act of Congress entitled "An act to reduce internal taxes, and for other purposes," passed July 14th, 1870 (whereby it was, among other things, enacted that after the thirty-first day of December, 1870, in lieu of the duties theretofore imposed by law on linseed imported from foreign countries, there should be levied, collected, and paid "the duty of twenty cents per bushel of fifty-six pounds weight, provided that no drawback shall be allowed on oil cake made from imported seed)," the allowance of any drawback on cake exported after December 31st, 1870, was prohibited, whether manufactured from seed imported and on which duties had been paid prior to that date or not. And as your petitioners are informed and believe, the Secretary of the Treasury directed and decided that after the thirty-first day of December, 1870, when such new tariff was by the terms of the act imposed, no linseed cake should be allowed to be entered for drawback.

And your petitioners further state that they are all citizens of the United States, and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; that said Ludlow D. Campbell was a citizen of the United States, and at all times bore true allegiance to the government of the United States, and did not in any way voluntarily aid, abet, or give encouragement to rebellion against the said government; that no assignment or transfer of the claims hereinbefore set forth, or of any part thereof, or any interest therein, except by reason of the death of said Ludlow D. Campbell as aforesaid, has been made at any time; that said petitioners are justly entitled to the amounts herein claimed from the United States, after allowing all just credits and offsets; and that no persons or person other than your petitioners are owners of the claims hereinbefore set forth, or interested therein.

22

Wherefore, your petitioners demand judgment against the United States for the sum of six hundred and eighty-five dollars and two cents, in gold coin of the United States, with interest thereon from the first day of March, 1871; and for the further sum of eleven hundred and thirty-six dollars and twenty-eight cents, in like gold coin, with interest thereon from the tenth day of March, 1871; and for the further sum of five hundred and sixty-eight dollars and eighty cents, in like gold coin, with interest thereon from the eighteenth day of March, 1871; and for the further sum of five hundred and fifty-four dollars and eighty-five cents, in like gold coin, with interest thereon from the first day of April, 1871; and for the further sum of one thousand and three dollars and forty-five cents, in like gold coin, with interest thereon from the twelfth day of April, 1871; and the further sum of fourteen hundred and six dollars and forty-four cents, in like gold coin, with interest thereon from the eighteenth day of May, 1871; and for the further sum of twenty-one hundred and sixty-six dollars and sixty-five cents, in like gold coin, with

interest thereon from the ninth day of June, 1871; and for the further sum of fifteen hundred and seven dollars and five cents, in like gold coin, with interest thereon from the fifteenth day of July, 1871; and on the further sum of eight hundred and eighty-five dollars and seventy-two cents, in like gold coin, with interest thereon from the thirty-first day of May, 1872.

CAMPBELL & THAYER.

EVARTS, SOUTHMAYD & CHOATE,
Solicitors for Claimants.

23 STATE OF NEW YORK,
Southern District of New York, ss:

George W. Campbell, one of the petitioners in the foregoing petition named, being duly sworn, deposes and says that no assignment or transfer of the claims set forth in said petition, or any part thereof, or any interest therein, except by reason of the death of Ludlow D. Campbell, as in said petition mentioned, has been made at any time; that said petitioners are justly entitled to the amounts in said petition claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true. And further deponent saith not.

GEO. W. CAMPBELL.

Sworn to before me this 23d day of December, 1876.

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Post-office address of claimants: Campbell & Thayer, 89 Maiden Lane, New York.

Post-office address of claimants' solicitor': Evarts, Southmayd & Choate, 52 Wall street, New York.

24 II. *Traverse.—Filed January* 22, 1877.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimants herein, and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of nine thousand nine hundred and fourteen dollars and twenty-six cents in gold coin, with interest, says that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

25 III. *Findings of fact and conclusion of law.—Filed June* 7, 1880.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows;

I. The claimants are the survivors of Ludlow D. Campbell, who, with

the claimants, composed the firm of Campbell and Thayer, at the time of the several transactions hereinafter found.

II. In the months of September, October, November, and December, 1870, the claimants and one Ludlow D. Campbell, composing the firm of Campbell and Thayer, imported and purchased from other importers at the city of New York large quantities of linseed, which was the growth and production of a foreign country, and had been imported in said
26 months of September, October, November, and December, 1870, from Calcutta, India, and at the time was on board the vessels on which it had been imported, from which, after the payment in said months of September, October, November, and December, 1870, of the duties thereon due to the United States, under and in pursuance of the provisions of the tenth section of the act of Congress of March 2, 1861, entitled "An act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," viz, at the rate of 16 cents for each and every fifty-two pounds thereof, the said linseed was removed from the vessels to the warehouses of the claimants' said firm, whence it was taken to their factory in the city of Brooklyn, in the State of New York, where it was, without intermixture with any other linseed or other material, manufactured into linseed
27 oil and linseed cake, of the latter of which article there were produced therefrom 5,156,585 pounds.

III. On the 19th day of January, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 447,712 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, duly presented to and lodged with the collector of customs for the port of New York, before putting or lading any of the said cake on board any vessel for exportation, an entry of said linseed cake for export by the ship Sterling Castle, which was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations pre-
28. scribed by the Secretary of the Treasury, in pursuance of the requirement of the fourth section of said act, and the said claimants and said Ludlow D. Campbell in all respects conformed to such regulations in respect to drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 5th day of December, 1870, wholly refused to perform or cause to be performed in any manner any other act than the receipt of said entry prescribed by said regulations to be done, or caused to be done, by a collector of customs under the said fourth section of said act.

Thereafter, in the month of January, 1871, the said 447,712 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship Sterling Castle, which vessel, with said
29 linseed cake on board, cleared at the custom-house at the port of New York for London on the 30th day of January, 1871, and

said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

IV. In the month of February, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 743,163 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, duly presented to and lodged with the collector of customs for the port
30 of New York, before putting or lading any of the said cake on board any vessel for exportation, an entry of said linseed cake for export by the ship Lufra, which was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the fourth section of said act; and the said claimants and said Ludlow D. Campbell in all respects conformed to such regulations in respect to drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 5th day of December, 1870, wholly refused to perform or cause to be performed in any manner any other act than the receipt of said entry prescribed by said regula-
31 tions to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of February, 1871, the said 743,163 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the ship Lufra, which vessel, with said linseed cake on board, cleared at the custom house at the port of New York for London, on the 8th day of February, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

V. On the tenth day of February, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 371,765, pounds of linseed cake, being parcel of the aforesaid 5,156,585
32 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, duly presented to and lodged with the collector of customs for the port of New York, before putting or lading any of the said cake on board any vessel for exportation, an entry of said linseed cake, for export by the ship Warwick Castle, which was accompanied with the certificate and oath required by, and was in all respects in conformity with the regulations prescribed by the Secretary of the Treasury, in pursuance of the requirement of the fourth section of said act; and the said claimants and said Ludlow D. Campbell, in all respects conformed to such regulations

in respect to drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable
33 by the United States thirty days after clearance of the vessel by which exportation was made; but the said collector, acting under instructions from the Secretary of the Treasury, given on the 5th day of December, 1870, wholly refused to perform, or cause to be performed in any manner, any other act than the receipt of said entry, prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of February, 1871, the said 371,765 pounds of linseed cake was shipped by the claimants and said Ludlow D. Campbell, on the said ship Warwick Castle, which vessel, with said linseed cake on board, cleared at the custom house at the port of New York, for London, on the 16th day of February, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been, at any time, relanded in any port or place within the limits
34 of the United States.

VI. On the 21st day of February, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 74,361 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the bark Dilpussund, which application was made before putting or lading any part of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects
35 in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate, and to give the bond with sureties in that behalf required by law, and in all respects to conform to said regulations so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after the clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform, or cause to be performed in any manner, any act prescribed by said regulations to be done or caused to be done by a collector of customs
36 under the said fourth section of said act.

Thereafter, in the month of February, 1871, the said 74,361 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said bark Dilpussund, which vessel, with said linseed cake on board, was cleared at the custom-house, at the port of New York, for London, on the 1st day of March, 1871, and said cake was thereupon

exported and carried by said vessel from New York to the port of London in England, and there discharged and delivered, and no part thereof has, been at any time relanded in any port or place within the limits of the United States.

VII. On the 1st day of March, 1871, the claimants and said Ludlow D. Campbell were the owners of, and had in their possession 126,170 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to Lon-
37 don, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector, and made application to lodge with him an entry of said linseed cake for export by the ship Tantallon Castle, which application was made before putting or lading any of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell, then and there, were ready and willing, and offered to make said entry in duplicate, and to give the bond, with sureties in that behalf, required by law, and in all respects to conform to said regulations, so
38 as to entitle them to the said allowance of drawback, which allowance had been by such regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after the clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform, or cause to be performed in any manner, any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of March, 1871, the said 126,170 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship Tantallon Castle, which vessel, with said linseed cake on board, was cleared at the custom-house, at the port of New York, for London, on the 13th day of March, 1871, and said cake was thereupon ex-
ported and carried by said vessel from New York to the port of
39 London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

VIII. On the eleventh day of April, 1871, the claimants and said Ludlow D. Campbell, were the owners of, and had in their possession 826,444 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made applica-

tion to lodge with him an entry of said linseed cake for export by the ship
Annie Richmond, which application was made before putting or
40 lading any of the said cake on board any vessel for exportation,
and was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury, in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate and to give the bond with sureties in that behalf required by law, and in all respects to conform to said regulations, so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after the clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform, or
cause to be performed, in any manner, any act prescribed by said
41 regulations to be done, or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of April, 1871, the said 826,444 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship Annie Richmond, which vessel, with said linseed cake on board, was cleared at the custom-house, at the port of New York, for London, on the 18th day of April, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

IX. On the first day of May, 1871, the claimants and said Ludlow D. Campbell, were the owners of and had in their possession 1,351,630
pounds of linseed cake, being parcel of the aforesaid 5,156,585
42 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt andf or other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the ship Lincoln, which application was made before putting or lading any of the said linseed cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate, and to give the bond, with sureties, in that behalf required
43 by law, and in all respects to conform to said regulations so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under

instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed, in any manner, any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of May, 1871, the said 1,351,630 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell on the said ship Lincoln, which vessel, with said linseed cake on board, was cleared at the custom-house at the port of New York for London, on the 10th day of May, 1871, and said cake was thereupon exported
44 and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

X. On the eighth day of June, 1871, the claimants and said Ludlow D. Campbell were the owners of, and had in their possession 636,440 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the bark Stanfield,
45 which application was made before putting or lading any of the said cake on board any vessel for exportation and was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury, in pursuance of the requirements of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate, and to give the bond, with sureties, in that behalf required by law, and in all respects to conform to said regulations, so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed in any
46 manner any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of June, 1871, the said 636,440 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell on the bark Stanfield, which vessel, with said cake on board, was cleared at the custom-house at the port of New York on the 15th day of June, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

XI. On the twenty-fourth day of April, 1872, the claimants and said

Ludlow D. Campbell were the owners of and had in their possession 578,900 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New
47 York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the ship Omba, which application was made before putting or lading any of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate and to give the bond, with sureties in that behalf required by law, and in all respects to conform to said regulation, so as to entitle them to the said al-
48 lowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed in any manner any act prescribed by said regulations to be done or caused to be done, by a collector of customs under the said fourth section of said act.

Thereafter, in the month of April, 1872, the said 578,900 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell on the said ship Omba, which vessel, with said linseed cake on board, was cleared at the custom-house at the port of New York, for London, on the first day of May, 1872, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England,
49 and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

CONCLUSION OF LAW.

Upon the foregoing facts the conclusion of law is that, for want of jurisdiction of the subject-matter in this court, on the grounds set forth in an opinion of the court in a previous case of the same claimants, of the same character as this, the claimants' petition should be dismissed.

That opinion is as follows:

IV. *Opinion of the court.*

DRAKE, Ch. J., delivered the opinion of the court:

Upon the foregoing facts the question arises whether this court has jurisdiction of this action.

The claimants rely, as sustaining our jurisdiction of their claim, upon the following cases decided by this court: Patton's case (7 Ct. Cls. R.,

362); Daily's case (Ibid., 383); Broulatour's case (Ibid., 555), and Kaufman's case (11 Ct. Cls. R., 659). We do not regard those cases as having that effect. All of them arose under the revenue laws, but they were of an entirely different character from this.

In Patton's case, the question was as to the authority of the Secretary of the Treasury to exact from a collector of internal revenue the return into the Treasury of a part of his salary which had been fixed by the Secretary, and allowed to the collector in his accounts with the Treasury Department, and which the Secretary, after the earning of the salary by the collector, attempted to reduce; and we held that the matter was one of contract, and not one of the administration of the revenue laws, and therefore within our jurisdiction.

50 In Daily's case, the claimant sued for a commission directly promised by statute upon purchases of internal-revenue stamps; and our jurisdiction of such a demand was upheld.

In Broulatour's case, the claim was for a sum of money deposited with a collector of customs to cover the amount of duty which, on calculation, might, by the collector, be found due on an invoice of imported merchandise. When the calculation came to be made by that officer, it was found that the deposit exceeded the amount of the duty, and we held that we had jurisdistion of an action to recover back the excess.

In Kaufman's case, the action was for the amount of an allowance made by the Commissioner of Internal Revenue in favor of the claimant as a refunding to him on an internal-revenue special-tax-stamp returned. The allowance was certified to the Comptroller of the Treasury, and nothing remained to be done but the passing of the claim by the accounting officers of the department, and the issuing of a warrant for payment. As the action was not brought for the determination of any question which was within the jurisdiction of the Commissioner, and did not seek to have the decision of that officer overruled, but to enforce a decision lawfully made by him, whereby the right of the claimant was, in law, adjudged and determined, the jurisdiction of the court was sustained.

On the other hand, where the right of a claimant was, by law, required to be determined by some executive officer, and it had either been determined against him or was still undetermined, we have held that we have no jurisdiction to overrule the decision already made or to determine the matter here, and, upon the basis of our determination, render a judgment against the government. The Portland Company's case (5 Ct. Cls. R., 441), Dougherty's case (6 Ibid., 90), Turner's case (9 Ibid., 367).

From this statement of the decisions of this court it will be observed that the question has not arisen here whether the court may, under § 1059 of the Revised Statutes, entertain jurisdiction of a claim arising under the revenue laws, as one "founded upon a law of Congress or upon a regulation of an Executive Department," where the law provides the claimant with no means of redress, either through the action of an executive officer or the jurisdiction of some other court; and upon that question we express no opinion. But, as a condensed summary of what has been held in those decisions we state the following points:

1. Where the Secretary of the Treasury, as in Broulatour's case, transmits hither a claim which arose under the revenue laws, accompanied by a statement of the facts in regard thereto, and submits to us the question of law arising on the facts, the court may take jurisdiction of the claim.

2. Where the law declares that, upon a party's doing some defined act, he shall be entitled to money from the government, and his right thereto is not made to depend upon the decision or action of some executive officer, but is complete upon the doing of the act, the claim for the money may be sued upon in this court.

3. Where, under the law, the right of a party to money from the government is made to depend upon some such decision or action, and the same has been rendered and taken in the party's favor, the claim for the money may be prosecuted to judgment in this court.

4. Where, under the law, such right is made to depend upon such decision or action, and the same has been rendered or taken against the party, this court has no jurisdiction to enforce the supposed right, because the law provides another tribunal for the settlement of the question of right, and there is no power here to review and reverse the action of that tribunal.

5. Where, under the law, such right is made to depend upon such decision or action, and none has been made or taken in the premises, the matter is still in fieri in the Executive Department, and the supposed right, not having been fixed in the legally-prescribed way, cannot be enforced through the jurisdiction of this court.

Clearly, the present case falls under the last conclusion thus stated.

The claim is for a drawback, alleged to be due the claimant under the 4th section of the act of August 5, 1861, "To provide increased revenue from imports, to pay interest on the public debt, and for other purposes" (12 Stat. L., 292), which provides as follows:

"That from and after the passage of this act, there shall be allowed, on all articles wholly manufactured of materials imported on which duties have been paid, when exported, a drawback equal in amount to the duty paid on such materials and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury: Provided, That ten per centum on the amount of all drawbacks so allowed shall be retained for the use of the United States by the collectors paying such drawbacks respectively."

Manifestly under this section there could be no fixed right to any specific sum of money as drawback, until the amount of the drawback should be ascertained under regulations prescribed by the Secretary of the Treasury.

51 On the 22d of January, 1862, that officer prescribed regulations under that section, the parts of which bearing on this case are as follows:

1. "To entitle the exporter to such allowance of drawback, he must, at least six hours previous to the putting or lading any of the articles intended to be exported by him for benefit of drawback on board any vessel or other conveyance for exportation, lodge with the collector of customs for the district from which such exportation is to be made, an entry setting forth his intention to export such articles, and the marks, numbers, and a particular description of the same, with their quantity and value, and designating the manufacturer thereof, the place where deposited, the name of the vessel or other conveyance in or by which, and the port or place to which the same is intended to be exported, and also describing in such entry the material or materials severally from which he claims the articles to have been manufactured, designating when, where, whence, by whom, and in what vessel

or other conveyance the same was or were imported, and specifying the quantity and value thereof used in the manufacture. This entry shall, upon presentation, be verified by the oath or affirmation of the proprietor and the foreman of the manufactory in which such articles were made.

2. "On receipt of this entry, in duplicate, thus verified, the collector shall examine, or where there is a surveyor at his port, shall direct that officer to examine, by himself or deputy, the articles described in the entry, and ascertain whether the same be as stated, and, if so found, mark with some appropriate device or appendage, each article or package thereof.

3. "On the receipt of the surveyor's return, the collector, if the articles be found to be entitled to drawback, shall transmit to the surveyor the entry lodged with him by the exporter, with direction to have the weight, gauge, measure, or count, as the case may require, of the said articles ascertained and returned, and the same laden for exportation.

4. "The service of superintending the lading for exportation must in all cases when practicable be performed by the officer who made the original inspection, who will be careful to examine the articles in order to identify them, and upon the lading thereof being completed, will make return," in a prescribed form.

5. "These proceedings having been had, and the entry with the certificate of lading thereon returned to the collector, the exporter shall, before the clearance of the vessel in which the exportation is made, take and subscribe an oath," in a form prescribed.

6. "The exporter shall also give bond to the United States, with two sureties, one of whom shall be the master or other person having charge or command of the vessel or other conveyance in or by which the said manufactured articles are intended to be exported, in a sum equal to the full value of said articles, said bond to be executed before the vessel is cleared at the custom-house, and to be" in a form prescribed.

7. "The manufactured articles having been duly laden for exportation, the exporter having taken the prescribed oath and executed the required bond, and the vessel having been duly cleared, the collector, in conjunction with the naval officer, where there is one, shall compute the amount of drawback to be paid in strict accordance with the results of the investigations made, and at the rates in that behalf hereinafter established or to be established on special application to the Secretary of the Treasury of the United States, and shall grant to the exporter a certificate for the net amount of such drawback in the form annexed, which certificate shall be made payable to such exporter or his order in thirty days from the date of the clearance of the vessel in which the exportation was made.

8. "These certificates * * * will be paid at maturity by the collector who granted the same, to whom they will be surrendered on payment."

These regulations show that much was required to be done by the exporter and the officers of the customs before the former could become entitled to be paid a drawback. Not until after all the preliminary steps and acts had been taken and done in accordance with those regulations could the claimants have acquired a legal right to demand and receive the collector's "certificate for the net amount of such drawback;" and without that certificate their right to the drawback was but inchoate, and incapable of completion in any other way than as those regulations prescribe.

The claimants, however, insist that as they took the initial step toward establishing their right in the premises, and the collector, acting under instructions from the Secretary of the Treasury, refused to take or allow to be taken any step whatever under those regulations, they are not thereby cut off from recovering here a judgment for the amount to which they would have been entitled if all the required steps had been taken. This position is not tenable, for the following reasons:

1. The drawback was a mere gratuity proffered by the Government, imposing no legal obligation upon the Government until the exporter's right thereto should be ascertained and established in the manner prescribed by law.

52 2. The ascertainment and establishment of that right was intrusted, by law and regulations, to certain executive officers, and not to the judiciary.

3. If those officers, for whatever reason, have refused or failed to act in the premises, that confers no authority upon this court to exercise functions delegated to them, and declare a right in the claimants, which the law and regulations require to be declared by those officers in a prescribed way, and do not authorize to be declared by any other officers or in any other way.

For want of jurisdiction in this court the petition must be dismissed.

53 V. *Final judgment.*

At a Court of Claims held in the city of Washington, on the 7th day of June, A. D. 1880, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said petition of the claimants, George W. Campbell and George A. Thayer, survivors of Ludlow D. Campbell, deceased, be dismissed.

54 VI. *Application for and allowance of appeal.*

The court having heretofore and on the seventh instant rendered judgment in the above-entitled case dismissing the petition therein, the claimants hereby respectfully made application for leave to appeal from such judgment to the Supreme Court of the United States.

Dated June 11, 1880.

EVARTS, SOUTHMAYD, AND CHOATE,
Claimants' Attorneys.

Filed June 12, 1880.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

55 In the Court of Claims.

GEORGE W. CAMPBELL AND GEORGE THAYER, survivors of Ludlow D. Campbell, dec'd,
vs.
THE UNITED STATES. } No. 11475.

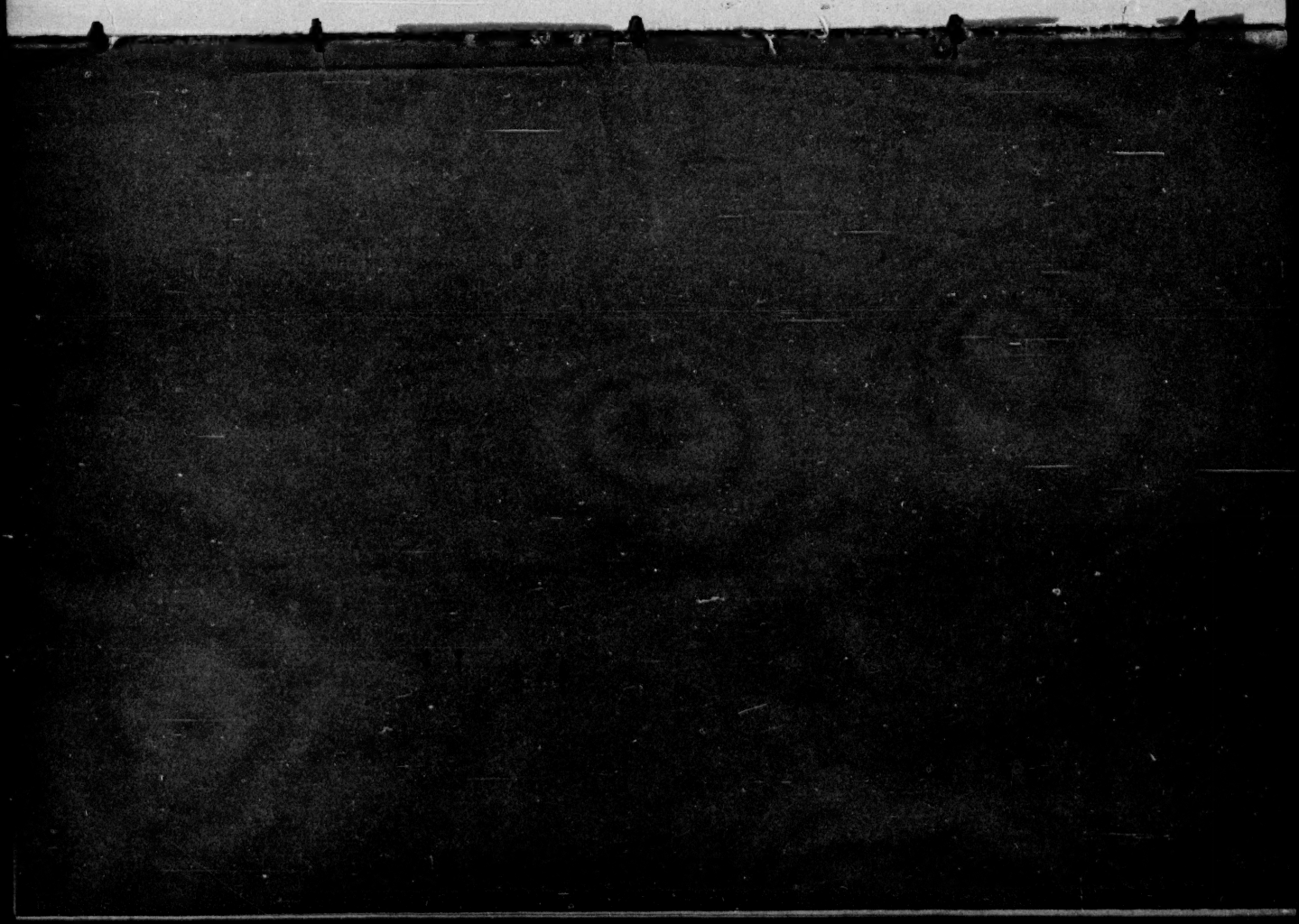
I, John Randolph, assistant clerk of the Court of Claims, do hereby

certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the court and the conclusion of law thereon; of the opinion of the court; of the final judgment of the court; of the application of the claimants for the allowance of an appeal to the Supreme Court of the United States, and of the order of Chief-Justice Drake allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this eighteenth day of June, A. D. 1880.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 232. George W. Campbell and George A. Thayer, survivors of Ludlow D. Campbell, dec'd, appellants, vs. The United States. Court of Claims. Filed 24th June, 1880.



OFFICE SUPREME COURT U. S.
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17-407

EVENING POST JOB PRINTING OFFICE, 208 B'way, N. Y.

Supreme Court of the United States.

GEORGE W. CAMPBELL AND OTHERS,
Appellants,
vs.
THE UNITED STATES,
Appellees.

No. 232.

STATEMENT.

This case comes up on appeal from a judgment of the Court of Claims, and arises upon certain statutes of the United States, giving a drawback or return of duties upon exportation which have been paid on importation. This system has been in operation from the earliest establishment of duties on importations under the Government.

Thus, the Act of July 4, 1789, the second act passed by the first Congress in its third section provides, that "all the duties paid, or secured to be paid upon any of the goods, wares and merchandises, as aforesaid, * * * * shall be *returned* or discharged upon such of the said goods, wares or merchandises as shall within twelve months after payment made, or

security given, be exported to any country without the limits of the United States, as settled by the late treaty of peace; except one per centum on the amount of the said duties, in consideration of the expense which shall have accrued by the entry and safe-keeping thereof."

St. at Large, Vol. I., p. 24.

In 1870, and since, the provision respecting drawbacks in force was as follows:

Provided, also, That merchandise upon which duties have been paid, if exported to a foreign country, within three years, shall be entitled to return duties, proper evidence of such merchandise having been landed abroad to be furnished to the Collector by the importer, one per centum of said duties to be retained by the Government.

Act Aug. 6, 1861; 12 St. at Large, p. 293.

At the time of the importations in question in this case, the following statutory provisions respecting the duty on importation of linseed, and drawback on exportation of linseed cake, made from imported, duty-paid linseed, were in force.

Act March 2, 1861, in section 10, imposed a duty on importation. "on flaxseed or linseed, sixteen cents per bushel of fifty-two pounds."

12 St. at Large, p. 178.

Act Aug. 5, 1861, section 10 provides:

"From and after the passage of this act, there shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid, when exported, a draw-back, equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretaryof the Treasury: *Provided*, that ten per centum on the amount of all drawbacks, so allowed, shall be retained for the use of the United States by the collectors paying such drawbacks, respectively."

12 St. at Large, p. 292.

The Secretary of the Treasury had fixed or "ascertained" the amount of drawback on the exportation of linseed cake, manufactured of imported linseed, to be seventeen cents per one hundred pounds, by Treasury regulations, under the authority of the statute.

The Act of July 14, 1870, section 21, provides:

"*After the the 31st day of December*, 1870, in lieu of the duties now imposed by law on the articles hereinafter enumerated or provided for, imported from foreign countries, there shall be levied, collected and paid the following duties and rates of duties, that is to say: * * *

"On linseed or flaxseed, twenty cents per bushel of fifty-six pounds weight: *Provided*, that no drawback shall be allowed on oil cake made from imported seed."

16 St. at Large, 262.

Section 26 of this act provides that goods in public store "on the day and year this act shall take effect," should pay no greater duty than if imported after that day, and that on such as the duties had been paid on, the difference should be refunded (p. 269).

The appellants brought an action in the Court of Claims to recover the drawback due under the statute, on exportation of linseed cake manufactured from linseed imported in 1870 (and on which import duties had been paid), at the rate fixed by the Secretary of the Treasury, viz.: 17 cents per 100 lbs.

In this action the facts found by the Court of Claims are as follows:

I.—The claimants are the survivors of Ludlow D. Campbell, who, with the claimants, composed the firm of Campbell & Thayer, at the time of the several transactions hereinafter found.

II.—In the months of September, October, November and December, 1870, the claimants and one Ludlow D. Campbell, composing the firm of Campbell & Thayer, imported and purchased from other importers at the City of

New York large quantities of linseed, which was the growth and production of a foreign country, and had been imported in said months of September, October, November and December, 1870, from Calcutta, India, and at the time was on board the vessels on which it had been imported, from which, after the payment in said months of September, October, November and December, 1870, of the duties thereon due to the United States, under and in pursuance of the provisions of the tenth section of the act of Congress of March 2, 1861, entitled "An Act to provide for the payment of outstanding Treasury notes, to authorize a loan, to regulate and fix the duties on imports, and for other purposes," viz., at the rate of 16 cents for each and every fifty-two pounds thereof, the said linseed was removed from the vessels to the warehouses of the claimants' said firm, whence it was taken to their factory in the City of Brooklyn, in the State of New York, where it was, without intermixture with any other linseed or other material, manufactured into linseed oil and linseed cake, of the latter of which article there were produced therefrom 5,156,585 pounds.

III.—On the 19th day of January, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 447,712 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, duly presented to and lodged with the collector of customs for the port of New York, before putting or lading any of the said cake on board any vessel for exportation, an entry of said linseed cake for export by the ship *Sterling Castle*, which was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury, in pursuance of the requirement of the fourth section of said act, and the said claimants and said

Ludlow D. Campbell in all respects conformed to such regulations in respect to drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 5th day of December, 1870, wholly refused to perform or cause to be performed in any manner any other act than the receipt of said entry prescribed by said regulations to be done, or caused to be done, by a collector of customs under the said fourth section of said act.

Thereafter, in the month of January, 1871, the said 447,712 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship *Sterling Castle*, which vessel, with said linseed cake on board, cleared at the custom house at the port of New York for London on the 30th day of January, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

IV.—In the month of February, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 743,163 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, duly presented to and lodged with the collector of customs for the port of New York, before putting or lading any of the said cake on board any vessel for exportation, an entry of said linseed cake for export by the ship *Lufra*, which was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the require-

ment of the fourth section of said act; and the said claimants and said Ludlow D. Campbell in all respects conformed to such regulations in respect to drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 5th day of December, 1870, wholly refused to perform or cause to be performed in any manner, any other act than the receipt of said entry prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of February, 1871, the said 743,163 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the ship *Lufra*, which vessel, with said linseed cake on board, cleared at the custom house at the port of New York for London, on the 8th day of February, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

V.—On the tenth day of February, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 371,765, pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, duly presented to and lodged with the collector of customs for the port of New York, before putting or lading any of the said cake on board any vessel for exportation, an entry of said linseed cake, for export by the ship *Warwick Castle*, which was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations pre-

scribed by the Secretary of the Treasury, in pursuance of the requirement of the fourth section of said act; and the said claimants and said Ludlow D Campbell, in all respects conformed to such regulations in respect to drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made; but the said collector, acting under instructions from the Secretary of the Treasury, given on the 5th day of December, 1870, wholly refused to perform, or cause to be performed in any manner, any other act than the receipt of said entry, prescribed by said regulations to be done, or caused to be done, by a collector of customs under the said fourth section of said act.

Thereafter, in the month of February, 1871, the said 371,765 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship *Warwick Castle*, which vessel, with said linseed cake on board, cleared at the custom house at the port of New York, for London, on the 16th day of February, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been, at any time, relanded in any port or place within the limits of the United States.

VI.—On the 21st day of February, 1871, the claimants and said Ludlow D. Campbell were owners of and had in their possession 74,361 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export

by the bark *Dilpussund*, which application was made before putting or lading any part of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate, and to give the bond with sureties in that behalf required by law, and in all respects to conform to said regulations, so as to entitle them to the said allowance of drawback, which allowance has been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after the clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, *wholly refused* to accept the said entry or bond, or to perform, or cause to be performed in any manner, any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of February, 1871, the said 74,361 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said bark *Dilpussund*, which vessel, with said linseed cake on board, was cleared at the custom house, at the port of New York, for London, on the 1st day of March, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

VII.—On the 1st day of March, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 126,170 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and in-

tending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector, and made application to lodge with him an entry of said linseed cake for export by the ship *Tantallon Castle*, which application was made before putting or lading any of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the requirements of the said fourth section of said act, and the claimants and said Ludlow D. Campbell, then and there, were ready and willing, and offered to make said entry in duplicate and to give the bond, with sureties in that behalf, required by law, and in all respects to conform to said regulations, so as to entitle them to the said allowance of drawback, which allowance had been by such regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after the clearance of the vessel by which the exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform, or cause to be performed in any manner, any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of March, 1871, the said 126,170 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship *Tantallon Castle*, which vessel, with said linseed cake on board, was cleared at the Custom House, at the port of New York, for London, on the 13th day of March, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at

any time relanded in any port or place within the limits of the United States.

VIII.—On the eleventh day of April, 1871, the claimants and said Ludlow D. Campbell were the owners of, and had in their possession, 826,444 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the ship *Annie Richmond*, which application was made before putting or lading any of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with the regulations prescribed by the Secretary of the Treasury, in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate and to give the bond with sureties in that behalf required by law, and in all respects to conform to said regulations, so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after the clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed in any manner any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of April, 1871, the said 826,444

pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell, on the said ship *Annie Richmond*, which vessel, with said linseed cake on board, was cleared at the custom house at the port of New York, for London, on the 18th day of April, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

IX.—On the first day of May, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 1,351,630 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the ship *Lincoln*, which application was made before putting or lading any of the said linseed cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with, the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate, and to give the bond, with sureties, in that behalf required by law, and in all respects to conform to said regulations so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under

instructions from the Secretary of the Treasury given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed in any manner any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of May, 1871, the said 1,351,630 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell on the said ship *Lincoln*, which vessel, with said linseed cake on board, was cleared at the custom house at the port of New York for London on the 10th day of May, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

X.—On the eighth day of June, 1871, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 636,440 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved Agust 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the bark *Stanfield*, which application was made before putting or lading any of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by, and was in all respects in conformity with the regulations prescribed by the Secretary of the Treasury in pursuance of the requirements of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate, and to give the bond, with

sureties, in that behalf required by law, and in all respects to conform to said regulations, so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed in any manner any act prescribed by said regulations to be done or caused to be done by a collector of customs under the said fourth section of said act.

Thereafter, in the month of June, 1871, the said 636,440 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell on the bark *Stanfield*, which vessel, with said cake on board, was cleared at the custom house at the port of New York on the 15th day of June, 1871, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

XI.—On the twenty-fourth day of April, 1872, the claimants and said Ludlow D. Campbell were the owners of and had in their possession 578,900 pounds of linseed cake, being parcel of the aforesaid 5,156,585 pounds, and desiring and intending to export the same from New York to London, for the benefit of the drawback authorized by the fourth section of the "Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, and to enter the same for drawback at the office of the collector of customs for the port of New York, duly presented to said collector and made application to lodge with him an entry of said linseed cake for export by the ship *Omba*, which application was made before putting or lading any of the said cake on board any vessel for exportation, and was accompanied with the certificate and oath required by,

and was in all respects in conformity with the regulations prescribed by the Secretary of the Treasury in pursuance of the requirement of the said fourth section of said act, and the claimants and said Ludlow D. Campbell then and there were ready and willing and offered to make said entry in duplicate and to give the bond, with sureties in that behalf required by law, and in all respects to conform to said regulation, so as to entitle them to the said allowance of drawback, which allowance had been by said regulations fixed at seventeen cents per one hundred pounds, and made payable by the United States thirty days after clearance of the vessel by which exportation was made, but the said collector, acting under instructions from the Secretary of the Treasury, given on the 10th day of February, 1871, wholly refused to accept the said entry or bond, or to perform or cause to be performed in any manner any act prescribed by said regulations to be done or caused to be done, by a collector of customs under the said fourth section of said act.

Thereafter, in the month of April, 1872, the said 578,900 pounds of linseed cake were shipped by the claimants and said Ludlow D. Campbell on the said ship *Omba*, which vessel, with said linseed cake on board, was cleared at the custom-house of the port of New York, for London, on the first day of May, 1872, and said cake was thereupon exported and carried by said vessel from New York to the port of London, in England, and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

Upon the statutes, as hereinbefore stated, and upon the facts proved and found in the Court of Claims, two questions of law arise:

I. Whether the drawback claimed, upon the facts shown, was due to the claimants from the United States.

II. Whether the Court of Claims had jurisdiction to entertain the action, and give judgment therein for the claimants against the United States, if the drawback, on

the facts of the case, was due to the claimants from the United States.

The Court of Claims disposed of the case upon a CONCLUSION OF LAW, stated as follows:

"Upon the foregoing facts the conclusion of law is that, for want of jurisdiction of the subject-matter in this court, on the grounds set forth in an opinion of the court in a previous case of the same claimants, of the same character as this, the claimants' petition should be dismissed" (Rec., p. 23; Opinion, pp. 23, 27).

POINTS.

First.—The obligation of the United States to the importer, who has paid the duties on importation, to return the duties to him on exportation, is one of contract created by statute.

I. When the article imported is *in specie* exported, there would seem to be no question that the RIGHT of the importer, on exportation, to the return of the duty he has paid on importation, is absolute and complete, *by mere force of the statute*, both as to the fact and the amount of such rightful demand on his part.

Nor is there any quality of "gratuity," on the part of the Government, in this option of re-exportation of imported goods, and the consequent return of the duties paid.

This option and this consequence are both an element of the transaction of importing dutiable merchandise. The value of this option to the importer is obvious. Its existence, or its absence would often be a determining consideration of the importation. Its importance to the Government, as an encouragement of foreign commerce, on which its customs duties wholly depend, is equally obvious.

The permanence of the drawback system, as an inseparable portion of the scheme of duties on importations, shows that its theory has approved itself in the experience both of commerce and of revenue. That theory is, that duties are exacted upon importations taken into consumption by the country, and the duties paid are the consideration, not of being allowed to land the merchandise, but to have it sold into the consumption of the country. The great case of Brown *vs.* Maryland rests upon this theory. Accordingly, when the merchandise is re-exported and so absorbs no part of the market of consumption, the Government readily returns the consideration paid for a right not exercised.

Of course, the government might exclude this option of commerce from the transaction of *importation* upon whatever motive; but so long as the existing statute stipulates the return of duties on re-exportation, a refusal to repay them is a refusal to pay a debt and perform a contract, just as much as a refusal to pay a bond of the funded debt would be.

So, too, if after the transaction of importation was completed, with this element of a right to drawback on re-exportation incorporated in it, Congress should *repeal* the right to drawback on past importations, it would be a law impairing the obligation of the contract between the Government and the importer under which the importation was made.

If this view of the completeness of the obligation on the Government by force of the statute of drawbacks itself be correct, all the arrangements for executing the obligation of the Government by paying the drawbacks, as, in fact, they become payable, constitute no part of the contract or of the obligation, *but are mere steps in the performance of the contract and the discharge of the obligation.*

So, too, the question whether, upon a refusal of the Government to return, or provide for a return of, the duties as stipulated, the aggrieved importer has any suit or recourse to collect what he is entitled

to, does not affect the nature or completeness of his right. An unperformed contract and an undischarged obligation of a government is not the less a contract, or an obligation, because the government cannot be proceeded against to judgment and execution.

Second.—But, the importations in question were of *raw material*, and the re-exportation of this raw material, *not in specie*, but as it reappears in a *manufactured product*. The statute was equally explicit and imperative that the drawback shall be paid, "equal in amount to the duty paid on such materials," as in case when the very merchandise is re-exported.

But, in the *ascertainment* of the amount paid on the raw materials, exported in a manufactured shape, it was not, as in the case of specific and unchanged condition of re-exportation, a mere matter of *record* what duties had been paid on importation, in order to measure the amount to be returned. Some, "ascertainment" needed to be made of what *ratio* represented the *weight* of linseed imported in the linseed cake exported, and an expression in money to be returned as drawback as the equivalent of the money received as duty.

This function, in regard to the manifold subjects of commerce and manufacture covered by this clause of the statute, was attributed to the Secretary of the Treasury by the statute itself.

This function performed, and the amount payable as drawback equivalent to the duty received once "ascertained," by the Secretary of the Treasury, and announced, the drawback on manufactured export of raw material, was just as definite, and the right to its payment just as complete, as if no such element in the statutory measure had been required.

As respects *this* subject of commerce, by regulations established in 1862, and in force at the time in

question, this rate had been fixed by the Secretary of the Treasury, at seventeen cents per 100 lbs. of the linseed cake exported.

It is manifest that after this ascertainment of the rate in money per pound weight, the rights of the importer were as absolute, both in fact and amount, as under the statute affecting exportations *in specie* they were made by mere force of the statute itself.

So, too, it is manifest that all other arrangements for executing the obligation of the Government, by paying *these* drawbacks, were mere steps in the performance of the contract, and the discharge of the obligation.

In this respect, and in respect of the power or means of *enforcing* his rights, after the *rate* had become a part of the statutory measure, by being "ascertained" by the secretary, the exporter of manufactured exports stood on the same footing as the exporter of merchandise in the specific form in which it had been imported.

Third.—There remain then but two questions for consideration upon the facts found by the Court of Claims, viz.:

(I.) Had the right of drawback been taken away, in respect to linseed cake, made from linseed imported before Dec. 31, 1870 (and on which duty had been paid before that date, under the law of 1861), by the Act of July 14, 1870.

(II.) If the *right* stood unimpaired, had the Government opened the Court of Claims to the adjudication of such right, and did the facts as found in the Court of Claims entitle the present appellant to a judgment in that court.

Fourth.—If seems plain, upon every recognized principle of construction, that the 21st section of the Act of July 14, 1870, was framed and intended *to have no operation whatever on importations completed before this section went into effect*, which was fixed to be after the 31st December, 1870.

> The previous importations had been transacted by the merchant importer as well upon the existing stipulations in regard to drawback, as upon those imposing duties, or regulating the period and condition of warehousing.
>
> If, as is not otherwise to be imputed to an Act of Congress, it had been intended *to take away a contracted right in respect to past importations*, by suppressing the option to re-export with drawback, some apt words would have been used to give this retroactive operation, *quoad hoc*, to legislation pointed wholly at future importations.
>
> But, besides the absence of any *words* in the statute that would make it thus retroactive, any such *intent* would be an opprobrious imputation upon the fair dealing of Congress, in repealing a material stipulation under which past importations had been invited and had been introduced.

The construction, then, of the Secretary of the Treasury of the *discontinuance of drawback in the future*, as not being applicable only to *importations in the future*, but as covering *exportations in the future of past importations*, was wholly at variance with any sound principle of interpretation.

The uniform habit of revenue legislation, and the uniform rule of judicial decision, have been, in respect to imports, that they are subject only to the law affecting them at the date of their importation, the importation being complete upon the arrival, which subjects the goods to the duty and gives them the benefit of the tariff law then in force; and a drawback has always been regarded, and can

only properly be regarded, as a rebate or conditional exemption from the duty imposed.

The Government says to the importer: "Your goods imported shall pay such a rate of duty, but it shall be refunded to you if they are afterwards exported." This is the contract upon which the importer relies, and as it cannot justly be changed afterwards by act of Congress, so no act of Congress, upon which a different construction can fairly be put, should be construed by implication so as to violate this clear understanding between the Government and the importer. Besides, a proviso cannot fairly be construed to qualify or impose a condition upon anything but the proposition to which it is attached, and cannot fairly be extended beyond that. The Act of 1870, by its 21st section, applies only to goods to be imported after December 31, 1870. Surely, then, the proviso cannot apply to any goods imported before that date.

A similar attempt to give a retroactive force to other provisos in the same section shows the absurdity and injustice of it. For instance, on oranges, *provided* that no allowance shall be made for loss by decay on the voyage unless exceeding twenty-five per cent. Would any one venture to claim that on oranges imported prior to December 31 the allowance for damage was taken away?

Again: on live animals, *provided* that animals specially imported for breeding purposes shall be admitted free. Could it be claimed that they were to come in free before the 31st of December, if, by existing laws, they were subject to duty?

Again: on cordials, liquors, etc., *provided* that any brandy or other spirituous liquor, imported in casks of less capacity than fourteen gallons, shall be forfeited to the United States. Could it fairly be claimed that liquor in such casks should be forfeited if imported prior to December 31, under acts previously existing which made such importation lawful?

It is clear that, in enacting the 21st section, the whole and every part of it, Congress, providing for a change of duty upon all the articles enumerated, to take effect after

December 31, had not in mind any imports completed before that date, but left those to be governed by existing laws.

The judgment or opinion of the learned court below did not pass upon this question, disposing of the case wholly upon the point of jurisdiction.

Fifth.—The present case falls plainly under the first and principal head of the jurisdiction of the Court of Claims as fixed by the statute on which the jurisdiction is founded.

This head of jurisdiction is thus defined: "All claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States."

The denial of jurisdiction by the Court of Claims rested upon two misconceptions:

I.—It gave to the judgment of this court in Nichols *vs.* The United States, 7 Wall., 122, the effect of an authority upon the question presented in this case, when its subject matter and its whole judicial reasoning refers to the wholly distinguishable case of *recovering back duties illegally exacted.*

This court simply held that the statute prescribed in such case the mode and form of protest, *as a condition precedent of any right of recovery*, and gave the suit against the collector, in the ordinary courts of law, as the recourse for enforcing the recovery, when the right of recovery was thus complete.

Consequently, when Nichols, who had not protested and could not maintain any suit, for that reason, in the courts of law, undertook to maintain a suit in the Court of Claims upon that defective case, this court

held (1) that Nichols had no cause of action on the merits, and (2) that the statutory suit against the collector excluded any other remedy against the Government to recover back duties.

A perusal of that case will show that in stating the general proposition that "cases arising under the revenue laws are not within the jurisdiction of the Court of Claims," the court had in mind only cases for the recovery back of duties illegally exacted.

II.—The second misconception of the Court of Claims in disposing of this case below, was, in treating the process and verification provided by the Government, for and in the *payment* of drawbacks, as being a provision of a mode and a tribunal, or *quasi* tribunal, for determining, measuring or enforcing a *right*.

But, as before shown, the Secretary of the Treasury, in case of drawback upon merchandise exported in the condition in which it was imported, had no function whatever to perform, except *to pay back the duty less one per cent.* Even that function is not assigned to him in terms. The Government owes it, and it belongs to him to pay it, as being charged with all fiscal duties, in the absence of any other designated agency.

So, as before shown, in the case of re-exportation in manufactured form, when the raw material had paid the duty on importation, *after the Secretary had performed the function of fixing the ratio in which the drawback was to be paid*, for all the rest the mode and steps of payment stood on the same footing as in the case of *exportation in specie*.

The Secretary had no discretion as to what rate, or in any other manner, how the payment was to be made. The law fixed the payment. The Government either made it or refused it.

The following cases in the Court of Claims, sustain the jurisdiction of that court in the present case when freed from these misconceptions :

Patton vs. *The United States*, 7 *C. Cls. R.*, 362.

Daily vs. *The United States*, 7 *C. Cls. R.*, 383.

Broulatour vs. *The United States*, 7 *C. Cls. R.*, 564.

Shelton vs. *The United States*, 8 *C. Cls. R.*, 487.

Kaufman vs. *The United States*, 11 *C. Cls. R.*, 659.

The last named case bears strong analogy to the present one, where the Treasury Department has refused to allow the right to which the party is clearly entitled, to enter his goods for drawback, and receive the same, being a wrongful refusal of the Secretary to admit the claim, for which claimant is without a remedy elsewhere than here.

Here also the same ground exists, upon which that case was decided, that there was a contract implied, if not expressed, on the part of the defendant to pay the drawback, which the Secretary should legally and properly permit to be ascertained and paid, and which, without reason, he has refused to do.

The case of *The Portland Company* vs. *The United States*, 5 *C. Cls. R.*, 441, where jurisdiction of a suit, brought to recover drawback under the Internal Revenue laws, was denied, is clearly distinguishable from the present case. Judge Peck, in that case, giving the opinion of the court, held that the case of *Nichols* vs. *The United States* applied, and deprived the court of jurisdiction, so that it was not open to this court to consider the matter, leaving it no alternative but to dismiss the claim. But Judge Nott, concurring, felt compelled to place the case upon different ground, and *held* that it was not like the case of Nichols, but was the case of a party seeking affirmative relief in this court given by an express statutory

provision, which at the same time prescribes a special mode of obtaining redress, and designates a particular tribunal as having what the courts have again and again held to be exclusive jurisdiction.

By referring to section 171 of the act, upon which the claim in that case was founded (the act of *July* 30, 1864, 13 Statutes, 302), it appears that the very statute which gives the drawback as Judge Nott says, "gives the claimant of it a special mode of obtaining redress, and designates a particular tribunal, in whom exclusive jurisdiction of the matter is vested," for it provides expressly that before the drawback can be paid the evidence that the duty or tax has been paid must be furnished to the satisfaction of the *Commissioner of Internal Revenue*, and that the amount shall be ascertained under such regulations as shall from time to time be prescribed by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury, and that the same shall be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States out of any money arising out of internal duties not otherwise appropriated. Until this recourse had been taken and proved fruitless, manifestly, a suit in the Court of Claims was premature.

But in respect to drawback under the Tariff Acts claimed in the present suit, there is no such provision. The amount is fixed by the act of Congress, and the only duty of the Secretary is to provide for its liquidation and payment.

Sixth.—The performance of every act and formality on the part of the present appellant required in the routine of the Customs service for the verification of the exportation and the computation of the drawback in each shipment, and of the landing of each shipment abroad, and that no part thereof had ever been relanded in the United States, are found by the Court of Claims.

Indeed, the whole ground and attitude of the Treasury Department and of the Customs service was purely of legal right, depending upon the question of the repeal or non-repeal of the drawback on re-exportations after December 31, 1870, of importations completed before that date.

It is respectfully submitted, that if, as would seem necessary, this court should maintain the *right* of drawback, its enforcement must follow, upon the proofs in this case, as making out every substance and formality of "a claim founded upon a law of Congress," and "of an express contaact with the Government of the United States," and thus within the jurisdiction of the Court of Claims.

Last.—The judgment below should be reversed, and judgment given for the amounts claimed, with interest.

EVARTS, SOUTHMAYD & CHOATE,
Attys. for Appellant.

WM. M. EVARTS,
Of Counsel.

OFFICE SUPREME COURT U. S.
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JAMES H. McKENNEY, Clerk

17-407

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

GEORGE W. CAMPBELL AND GEORGE A. Thayer, survivors, &c.,
vs.
THE UNITED STATES.
No. 232.

BRIEF FOR THE UNITED STATES.

The object of this suit is to recover from the United States certain allowances by way of drawback on several exportations of linseed cake wholly manufactured by the plaintiffs out of imported materials on which the duties have been paid.

The claim arises under the fourth section of the act of 5th August, 1861 (12 Stats., 292), which provides—

> That from and after the passage of this act there shall be allowed, on all articles wholly manufactured of materials imported on which duties have been paid, when exported, a drawback equal in amount to the duty paid on such materials and no more, *to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury;* provided that ten per centum on the amount of all drawbacks so allowed shall be retained for the use of the United States by the collectors paying such drawbacks respectively.

For the purpose of carrying this provision into effect the Secretary of the Treasury made a series of regulations, which are set out in the opinion of the court below (R., pp. 25, 26).

It is unnecessary to refer to the merits of the cause, as the Court of Claims did not pass on them, but dismissed the claimant's petition on the ground that it had no jurisdiction to entertain it.

Congress, having an eye to the protection of the revenue against fraud in the matter of drawbacks, gave it in charge to the Secretary of the Treasury to make regulations adequate to that end.

Indubitably the regulations made pursuant to this statutory requirement are as imperative and their observance is as necessary as though they had been incorporated into the statute.

There would seem to be little, if any, room for two opinions as to whether Congress intended that no drawback should be paid without strict conformity to the statute and the Treasury regulations.

Nevertheless, the case of the claimant rests wholly on the contention that when a collector rejects a demand for drawback the Court of Claims has jurisdiction to adjudge its payment *without any observance* of those regulations upon which Congress relied for the protection of the Treasury, and that, too, in the case *of a mere gratuity*, for the drawback is nothing more.

Did Congress intend that the Court of Claims should administer the revenue laws without any regard to the rules and safeguards which are deemed necessary in the ordinary administration of those laws?

A stronger case than this one to show the wisdom of this court in laying down, in Nicholls *v.* The United States (7 Wall., p. 122), that "cases arising under the revenue laws are not within the jurisdiction of the Court of Claims" could hardly be imagined.

It is difficult to see any other intent in the law than that the decision of the revenue department on the question of drawback should be final, leaving the claimant no other recourse than an application to Congress.

In view of the satisfactory discussion of the question of jurisdiction by the Court of Claims, we deem it unnecessary to discuss the question further.

It is submitted that the judgment must be affirmed.

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